



REGULATING ONLINE COMMENTS

Case Studies from OSCE Countries

ISTANBUL, TURKEY

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- States are still in the early stages of understanding how best to approach general Internet regulation. Many attempts to legislate online content interfere with traditional protections of freedom of expression.
 - *Challenges:*
 - International hosting sites and global sharing mechanisms
 - Anonymity
 - Role of Internet Service Providers (ISPs, companies or organisations that provide users access to the Internet, often through a cable or ADSL company), hosting companies (such as Yahoo and Wordpress) or social media platforms (like Facebook and Twitter)

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- Most stakeholders apart from intellectual property rights holders argue that filtering is inappropriate, as it is a blunt instrument that over-filters and thus infringes on freedom of expression or under-filters and thus is ineffective.
 - In most OSCE countries, online comments are self-regulated or co-regulated, guided by laws that require news sites or blog owners to manage comments. Blog hosts like Wordpress have moderating tools to filter comments and require commenters to provide their names and e-mail addresses.

European Union Directive on Electronic Commerce (July 2000)



- A ‘notice-based take-down procedure’
- The EU Directive makes ISPs and hosting companies liable within limits and after being notified of illegal content on their sites.
- ISPs must have sufficient knowledge of illegal material on the sites they host in order to be held liable, though ISPs and holders of intellectual property rights differ on what it means to have ‘sufficient knowledge’

- OSCE country with notice and take-down obligations
- Nation-wide practice resulting from one case's decision
- After complaint of defamation or other illegal commentary, the ISP or website manager must remove the comment

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- A case from 2009 regarding the controversy over the European Directive and the challenge of regulating comments
 - Delfi is a popular, widely read Internet platform in Estonia and has its own journalists and provides original news.
 - Delfi published a news story about a private company planning to destroy roads linking Estonia mainland to its islands, and readers posted offensive comments about the company's majority shareholder, who sued for defamation in Estonian courts. The courts found that the comments were slanderous and awarded the plaintiff a small sum of money while also ruling that Delfi should instate a policy to prevent or remove defaming comments.
 - As a result, Delfi and other sites have introduced monitoring of offensive comments and many require user registration to add comments. Such monitoring and codes of conduct are managed by each private website, and not the state. Delfi has joined Estonia's press council in the wake of the case, subscribing to the same self-regulatory system as print newspapers.
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- 2010: Controversial new media law
 - Inconsistent with European practices and norms of democratic free press
 - Would adopt a single regulatory framework for all media sectors (press, broadcast, online)
 - The Hungarian Constitutional Court declared major parts of the new law unconstitutional in December 2011.
 - User-generated content is not regulated under the new media law, as it is not explicitly mentioned in the legislation
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Hungary: Népszava Incident



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- Before being declared unconstitutional, the Media Commissioner reprimanded the editor-in-chief of Népszava, a daily social-democratic newspaper, for an online comment left by a reader that criticized a former Hungarian president, and the Commissioner demanded its removal. Although site managers understood that comment sections were excluded from the strict media law that only referred to editorial content, in response to the Népszava incident, several sites restricted or began to monitor comment sections.
 - Today, some sites such as politics.hu have disclaimers above the comments sections that state they are not responsible for the views expressed by readers but do reserve the right to remove off-topic material or that which constitutes 'hate speech'.
 - Newsrooms tend to moderate comments without publicly stating it to prevent their own liability

Examples of Online Comment Regulation in OSCE Countries: 3) Jordan



- OSCE Partner for Co-Operation in the Mediterranean region
- Recently proposed amendments to the existing Press and Publications Law that will require 'electronic publications' to obtain licenses and give executives the power to block websites or shut them down if they are not licensed
- The role of intermediary players such as website managers and editors-in-chief of news sites is controversial under Jordan's proposed amendments because it makes them responsible for comments posted by other users. Managers would be required 'not to publish comments containing information or facts unrelated to the news item or if their truth has not been checked.'
- Free speech advocates argue that, rather than prosecuting website managers, the government should find another way to correct libellous or otherwise illegal comments, along the lines of the notice and take-down procedures (see EU Directive above)

United Nations Special Rapporteur on the promotion and protection of freedom of expression and opinion



- *'Holding intermediaries liable for the content disseminated or created by their users severely undermines the enjoyment of the right to freedom of opinion and expression, because it leads to self-protective and over-broad private censorship, often without transparency and the due process of the law.... Censorship measures should never be delegated to a private entity and...no one should be held liable for content on the Internet of which they are not the author.'* (Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, May 2011)
- On social networks like Facebook and Twitter, the volume and speed of comments makes it extremely difficult to review every posting before publication, thus making timely and effective monitoring an unreasonable expectation for site managers.

Examples of Online Comment Regulation in OSCE Countries: 4) United Kingdom



- Draft Defamation Law (October 2011) seeks to reform the current defamation law and address the issue of enforcing the law online.
- Explicitly discusses online comment sections and encourages the following:
 - *Ensuring that people who are defamed online, whether or not they know the identity of the author, have a quick and inexpensive way to protect their reputation, in line with our core principles of reducing costs and improving accessibility;*
 - *Reducing the pressure on hosts and service providers to take down material whenever it is challenged as being defamatory, in line with our core principle of protecting freedom of speech; and*
 - *Encouraging site owners to moderate content that is written by its users, in line with our core principle that freedom of speech should be exercised with due regard to the protection of reputation*

Distinguishes between **identified material** (where users reveal their identity) and **unidentified material** (where it is published anonymously).

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- The writers of the draft law say they are trying to promote a culture in the UK of ignoring and de-legitimising anonymous comments online so as to discourage their proliferation.

'The challenges facing regulation of the internet contribute to what some people have described as a new 'Wild West', in which law enforcement is failing to keep pace with technology. Issues of this kind will not be solved overnight. There is, and will be, cultural change as we adapt to the use of new communication technologies. The law needs to respond to this. ... Specifically we expect, and wish to promote, a cultural shift towards a general recognition that unidentified postings are not to be treated as true, reliable or trustworthy. The desired outcome to be achieved—albeit not immediately—should be that they are ignored or not regarded as credible unless the author is willing to justify or defend what they have written by disclosing his or her identity. (UK Draft Defamation Law, Article 103)

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- The passage of the Draft Defamation Law in the UK could chill freedom of expression, as hosts are likely to be quick to remove any material that results in a complaint, preventing legitimate debate and suppressing the online discussion.

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- It is unlikely there will be a unified policy regarding regulation of online comments any time in the near future.
 - Policies used by each country should not violate freedom of expression as stated in Article 10 of the European Convention of Human Rights, nor should they hold the wrong party liable for posts, particularly considering the rate and volume at which online comments are posted and circulated.